IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 18143 of 2004

Between:

M/s. Duggirala Ramakotaiah H. NO. 31-9-8/9,

Magantivari Street, Maruthi Nagar
Vijayawada rep by its proprietor Sri D. Ramakotaiah

..... PETITIONER

AND

1. Commercial Tax Officer, Seetharamapuram Circle, Vijayawada
2. Deputy Commissioner (CT)-II, Vijayawada

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction particularly one in the nature of Writ of Mandamus directing the first respondent to effect refund of a sum of Rs. 12,37,317/- for the assessment years 1998-99, 1999-2000, 2000-01 and 2001-02 as per the C notices issued by the first respondent together with interest in terms of Section 33-E of the APGST Act.

Counsel for the Petitioner: MR.S.KRISHNA MURTHY

Counsel for the Respondents: Mr.K.Raji Reddy, Spl. Standing Counsel for Commercial Taxes.

The Court made the following :

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ORDER: **(PER HON'BLE SRI JUSTICE B. SUDERSHAN REDDY)**

The writ petitioner prays for issuance of a Writ of Mandamus declaring the action of the first respondent in refusing to refund a sum of Rs.12,37,317/- for the assessment years 1998-99, 1999-2000, 2000-01 and 2001-02 as per 'C' notices issued by the first respondent together with interest in terms of Section 33-E of the APGST Act. The petitioner accordingly prays for issuance of a consequential direction directing the respondents to refund the said amounts with interest payable thereon.

The petitioner is a registered works contractor. That the assessment for the years 1998 to 2002 were finalized and the following amounts were found due to be refunded as per the assessment orders.

Year of Dt. Of finalisation Excess Tax

Assessment of the assessment determined

1998-1999 05-05-2000 Rs. 91,564/-

1999-2000 20-09-2000 Rs. 2,08,487/-

2000-2001 17-09-2000 Rs. 5,42,904/-

2001-2002 01-08-2003 Rs. 3,94,362/-

There is no dispute about the same. It is in respect of those amounts, the petitioner

had chosen to file this writ petition seeking refund.

In the counter-affidavit filed by the first respondent- Commercial Tax Officer, it is explained that the second respondent- Deputy Commissioner (CT) – II Division, Vijayawada, revised the assessment for the year 1998-99 *vide* proceedings dated 30-1-2002 as a result B3 demand for Rs.2,80,633/- arose against the petitioner. The petitioner infact filed an appeal before the STAT in T.A.No.979 of 2001, which is pending. Similarly, the assessment for the year 1999-2000 was also revised by the second respondent as a result of which the following amounts were found due from the petitioner.

Year Date of B3 Tax Served on

Revision

1999-2000 17-09-2004 Rs.1,92,302-00 23-09-2004

2000-2001 21-09-2004 Rs. 37,811-00 30-09-2004

The petitioner filed appeals even in respect of those demands challenging the correctness of the decision of the Deputy Commissioner.

In the circumstances, it is not possible to issue directions as prayed for, to refund the amounts. The appeals preferred by the petitioner are required to be disposed of, on their own merits. The question of refund of amounts, as such, would arise only after the disposal of the appeals stated to have been already preferred by the petitioner.

Learned Counsel for the petitioner, however, strenuously contended that the petitioner is entitled for refund of the amount for the assessment year 2001-02 for the reason that there is no revision of assessment, as such, as on today. But in the counter-affidavit filed by the first respondent, it is stated that even for the

assessment year 2001-2002, the revision of assessment by the Deputy Commissioner (CT) is pending disposal and a show cause notice dated 27-04-2004 was served on the petitioner on 4-5-2004 and the petitioner having appeared before the Deputy Commissioner sought for time to file objections, opposing the show cause notice. The proceedings are pending before the Deputy Commissioner, in respect of which, we do not propose to express any opinion whatsoever. The facts speak for themselves. The petitioner having waited for a period of more than six months after undertaking to file objections to the show cause notice had chosen to file this writ petition on 4-10-2004 in this Court seeking refund of the amounts. In the facts and circumstances, we are not inclined to issue any such directions directing the refund of the amounts for the simple reason that even for the year 2001-2002 assessment, the revision proceedings are pending before the Deputy Commissioner (CT). The objections to be preferred, if not already preferred, shall be duly taken into consideration by the Deputy Commissioner and an appropriate decision thereon shall be taken in accordance with law. In case if the Deputy Commissioner drops the proceedings for the year 2001-02, after considering the objections of the petitioner, there will be no alternative but to refund the amounts to the petitioner for the assessment year 2001-2002. The question of refund of the amounts for the year 2001-2002 also shall depend upon the orders to be passed by the Deputy Commissioner. For the present, we are not inclined to issue any directions as prayed for directing the refund of the amounts.

We find no merit in the writ petition and the same shall accordingly stand dismissed. There cannot be any dispute that in case the proceedings end up in favour of the writ petitioner, the respondents are liable to refund the amounts to the petitioner with interest in accordance with the provisions of the Act. No costs.

B. SUDERSHAN REDDY, J

22-11-2004

T.CH.SURYA RAO, J

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lur/msv

Copy to:

1. The Commercial Tax Officer, Seetharamapuram Circle,

Vijayawada
2. The Deputy Commissioner (CT)-II Vijayawada

3. Two CD copies.